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SKS Microfinance and For-Profit MFIs, Unscrupulous Predators or Political Prey? Examining the Microfinance Credit Crunch in Andhra Pradesh and Assessing the Applicability of the UN Global Compact "Protect Respect Remedy" Framework

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**SKS Microfinance and For-Profit MFIs, Unscrupulous Predators or Political Prey?
Examining the Microfinance Credit Crunch in Andhra Pradesh and Assessing the
Applicability of the UN Global Compact “Protect Respect Remedy” Framework¹**

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Introduction

Microfinance is the practice of originating small loans and capital infusions in developing countries to poor individual families and small businesses that are outside traditional banks. Today microfinance has grown into a multi-billion dollar industry that has stakeholders in the financial services industry, private international organizations (including non-governmental organizations (“NGOs”)) and global politics. The successful initial public offering (“IPO”) of SKS Microfinance, (“SKS”) a for-profit microfinance institution² (“MFI”) in August 2010 marked the pinnacle of success for the theory that for-profit MFIs could eradicate poverty while simultaneously making a huge profit through microfinance. The extremely successful SKS IPO bolstered the idea that private industry and NGOs, not governments, should lead the effort to eradicate global poverty with for-profit microfinance being the tool to help reach the almost three billion unbanked people in the world and help further small-scale civil society and community development. Scaling-up outreach to the many poor and underserved people had become a primary goal in microfinance and for-profit MFIs such as SKS seemed poised to help achieve that goal while simultaneously making large profits.

Events subsequent to the successful SKS IPO have intensified criticism of this theory and have also highlighted another narrative regarding for-profit MFIs generally and microfinance in India particularly: that for-profit MFIs, in an effort to sustain profits, have made irresponsible investments and have abused the very poor communities in which these companies were supposed to help eradicate poverty and encourage development. Since October 2010, the entire Indian microfinance industry has come under scrutiny due to the growing suspicion of for-profit MFIs and their actions in India. Andhra Pradesh, a state on India’s eastern coast which has more

borrowers than any other state in India, is facing a microfinance credit crisis, because of a severe decline in the recent level of repayment of MFI loans. According to the international press, the situation in Andhra Pradesh is threatening to become the Indian equivalent of the 2007-2008 American subprime crisis.³ Many international news sources, including the *Wall Street Journal*, *Times of India*, and the *New York Times* have published accusatory articles linking the rise of for-profit MFIs to a microfinance loan crisis in Andhra Pradesh, and suicides and community banishments.⁴ In response to these allegations, the Andhra Pradesh state government rolled out *An Ordinance to Protect the Women Self Groups from Exploitation by the Micro Finance Institutions in the State of Andhra Pradesh and for the matters connected therewith or incidental therefor*, which soon after became a law of the same name (“MFI Bill”), which regulated the lending practices of MFIs in Andhra Pradesh.⁵ While government regulation is an important and necessary element in correcting the damage, the MFI Bill, as it stands today, has serious limitations in its approach to the microfinance situation in Andhra Pradesh and does not adequately address the situation. The MFI Bill’s largest drawback is that it only regulates the conduct and actions of MFIs and does not attempt to regulate the Self Help Groups, (“SHGs”) or any other type of microfinance organization operating in India.⁶ Part of the MFI Bill’s overlooking of SHGs is because they are promoted by the Indian government and national banking system and recently have experienced intense competition in total percentage of loan disbursement from for-profit MFIs. Consequently, the MFI Bill, with its specific targeting of for-profit MFIs does not provide adequate regulation of microfinance organizations.

For-profit MFIs, such as SKS, are not the sole cause for the microfinance crisis and the MFI Bill is not a panacea that will cure microfinance abuses in Andhra Pradesh. Instead, the microfinance community in Andhra Pradesh state would greatly benefit from (in addition to

government regulation) a legal accountability system that relies on “public accountability, transparency and the enlightened self-interest of companies, labor and civil society to initiate and share substantive action.”⁷

Regulating the microcredit companies while still allowing them to function and grow as private enterprises poses an important new challenge for government authorities, the financial industry, broader civil society, and other stakeholders. This discussion is necessary and extremely timely given the Andhra Pradesh situation and the ensuing rush by the media and local government to blindly condemn for-profit MFIs. The emergence of new vehicles for delivering financing to inhabitants of developing countries is part of the fragmentation and realignment of the institutional landscape of foreign aid⁸ as well as part of the landscapes of international law and corporate social responsibility.⁹ Devising an appropriate framework to encourage the microfinance sector’s growth potential, while ensuring financial stability, sufficient governmental control, and on-the ground solutions for local stakeholders is necessary. This framework must address the growing role of private companies, particularly the financial services industry and NGOs in the day-to-day operations, while also still engaging state and local government and affording them opportunities to regulate and protect its citizens. Such a solution I believe is best articulated through the United Nations (UN) Global Compact and Special Representative of the Secretary General (SRSG) John Ruggie’s Protect, Respect, Remedy¹⁰ framework.

The UN Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with universally accepted principles in the area of human rights, labor, environment, and anti-corruption.¹¹ I believe that it is this framework that

best articulates the collaborative nature and social enterprise elements of microfinance as the Global Compact is the expression of a global wish for companies to assume global responsibility.¹² The UN Global Compact recognizes and promotes the right to development,¹³ which is a central human right at issue Andhra Pradesh. Additionally, the UN Global Compact SRSR Protect Respect Remedy framework best envisions the corporate engagement that is needed to reform the microfinance industry in Andhra Pradesh.

This paper examines (1) in the history of microfinance generally and India as well as a brief history of SKS; (2) the two main types of microfinance organizations in India, MFIs and SHGs and the competition between SHGs and MFIs and its effect on the MFI Bill; (3) an evaluation of the MFI Bill; (4) an evaluation of the UN Global Compact Protect Respect Remedy Framework as a possible methodology that would improve the Indian microfinance industry.

I. Microfinance Evolution and Application

a. Microfinance Origins and Ideals

Microfinance, the concept of lending small amounts of money to impoverished and ignored community members in developing nations,¹⁴ developed as a means for poor people to gain access to basic financial services because traditionally the banking sector deprived these people of access to credit. Mohammad Yunus, who received the Nobel Prize in 2006 for his work in pioneering microfinance, described the role of microfinance in poverty alleviation (in contrast with traditional charitable donations) as follows:

“[Microcredit] is based on the premise that the poor have skills which remain unutilized or underutilized. It is definitely not the lack of skills, which make poor people. . .

charity is not the answer to poverty. It [charity] only helps poverty to continue. It [charity] creates dependency and takes away the individual's initiative to break through the wall of poverty. Unleashing of energy and creativity [via microfinance] in each human being is the answer to poverty.”¹⁵

Yunus's vision of microfinance was largely focused on lending to rural communities in agrarian projects and other types of directed credit programs which would later be expanded to include more urban community project and different types of enterprises. His contribution and influence upon microfinance cannot be underestimated.

b. 1980s-1990s: Transition to Financial Systems Microfinance Approach

Through the 1990s, the policy of targeted subsidized rural credit that was initiated in the late 1970s, came under a slow but increasing attack as evidence mounted of the disappointing performance of directed credit programs: namely poor loan recovery, high administrative costs, agricultural development bank insolvency, and the accrual of a disproportionate share of the benefits of subsidized credit going to larger commercial-style farmers.¹⁶ The basic tenets underlying the traditional directed credit approach were debunked and supplanted by a new school of thought called the "financial systems approach," which viewed credit not as a productive input necessary for agricultural development but as just one type of financial service tool that should be freely priced to guarantee its permanent supply and eliminate rationing.¹⁷

Meanwhile, microcredit programs throughout the world improved upon the original microfinance methodologies and their findings defied conventional wisdom about financing the poor. First, the new programs success showed that poor people, especially women, had excellent

repayment rates among the better-designed and implemented programs, repayment rates that were better than the formal financial sectors of most developing countries.¹⁸ Second, the poor people who participated in microcredit plans were willing and able to pay interest rates that allowed MFIs to cover their costs.¹⁹

One reason for the improved repayment rates was because of the new factors that the NGOs began to employ in determining credit-worthiness and encouraging repayment.²⁰ Because their clients did not possess traditional loan factors such as collateral, microfinance organizations issued loans that were often only given for entrepreneurial activities and decisions to lend were based on personal characteristics and cyclical business cash flow instead of aggregate business capital and holdings or personal capital.²¹ To determine reliability, microfinance organizations and other NGOs would interview family neighbors and business contacts.²² To encourage repayment the microfinance organizations would reward reliable clients with larger loans at lower interest rates and involve the community with the loan process.²³ The particular loan vetting factors of personal and community knowledge helped to permit growth and eliminate some of the externalities faced by the directed credit approach of the 1960s and 1970s.

High repayment and cost-recovery interest rates permitted some MFIs to achieve long-term sustainability and reach large numbers of clients. Accordingly, in the 1990s there was growing enthusiasm for promoting microfinance as a sustainable strategy for poverty alleviation in developing nations worldwide. The microfinance sector blossomed in many countries and world regions, eventually leading to many financial services firms serving the needs of individual entrepreneurs and household businesses.

The success of microfinance organizations in the 1990s led to the theory of deriving profits from microfinance industry and the subsequent privatization of NGOs and microfinance

organizations in an attempt to harness these profits. Commercial banks began paying serious attention to microfinance, realizing that they could likely make a profit.²⁴ The growth of microfinance saw many microfinance NGOs transform into professional financial institutions which specialized in microfinance loans and financial products.²⁵ Since the 1990s, foundations, venture capitalists, and the World Bank have used India as a petri dish for similar for-profit social enterprises which sought to make profits while filling a social need.²⁶ India was a logical choice for this type of microfinance experimentation because of its proximity to the origin of microfinance (Mohammed Yunus in Pakistan), India's large and diverse population, and the large English speaking segment of its population.

c. Indian Microfinance and the Evolution of SKS Microfinance

In India and Pakistan there is a modern history of independent microfinance, which was initially in the form of cooperative bank lending.²⁷ In some cases, these informal networks were groups of friends and neighbors, where the role of lender and borrower were interchangeable.²⁸ In other circumstances, individuals relied on local moneylenders who would offer small loans on flexible but exorbitant terms.²⁹ Besides the early cooperative banks, the region was a test ground for the Grameen Bank (led by Mohammed Yunus), an early lending experiment that proved successful and later emerged as leading not-for-profit microfinance institution.³⁰

SKS was founded by Vikram Akula in 1997 as an NGO.³¹ In 1998, SKS began operations in Tumnoor Village in Medak district of Andhra Pradesh.³² SKS was initially backed by famous investors like George Soros and Vinod Khosla, a co-founder of Sun Microsystems.³³ In 2005, SKS transitioned from a non-profit microfinance organization into a for-profit MFI.³⁴

In 2008, SKS becomes the first MFI to receive an ISO 9001:2000 certification for its internal audit department.³⁵

SKS is one of the largest microfinance institutions in the world servicing around 6.8 million clients, who are comprised mostly of poor women living in rural areas.³⁶ SKS is also one of the fastest growing MFIs, with a compound annual growth rate of 165% since 2004 and revenues and profits have grown at a rate close to 100% annually in recent years.³⁷ SKS has a loan portfolio that is estimated at a value of 43 billion rupees (\$940 million).³⁸

In August 2010, SKS became the second MFI (the first in South Asia) to go public by listing its shares on a public stock market.³⁹ SKS and its shareholders raised nearly \$350 million during the IPO.⁴⁰ This year, Vikram Akula, chairman of SKS Microfinance, privately sold shares worth about \$13 million.⁴¹

In recent years SKS has demonstrated tremendous interest from the global financial markets through capital raises and its recent IPO. In 2008, during the depths of the financial crisis⁴², SKS was able to raise \$75 million of new equity capital to expand its business.⁴³ In August 2010, SKS completed an IPO that from the global financial perspective was a great success: it was 13 times oversubscribed, and the company's valuation reached the top of the offer band price (which initially listed the value of the company at \$1.5 billion), and the share price rose 13% on its first day of trading and rose 29% within four weeks of the IPO. In the process, SKS raised \$348 million in fresh capital that, in theory, was supposed to help further grow the business and allow SKS to serve more people with financial services and microcredit than it reached before the IPO.⁴⁴

The success of the SKS IPO garnered enthusiasm and hope in regards to for-profit MFIs. Fueled by new capital, SKS, in theory, had more ability to scale-up the volume of its microfinance services to poor customers in India. However, the SKS IPO also intensified already festering competition among the other Indian microfinance organizations. Particularly, the SHGs viewed the rapid ascension of for-profit MFIs such as SKS with great alarm.

II. Dominant Microfinance Organizations in India: SHGs and MFIs

a. Overview of Indian Microfinance Landscape

The number of individuals and small businesses seeking to get involved in Indian microfinance has mushroomed and created a large and sometimes confusing variety of organizations that are being used to channel the growing capital flows related to microfinance.⁴⁵ Host states like India have had widely divergent regimes for chartering and regulating the new microfinance-related institutions and often inadvertently erected insurmountable barriers to their operation through chartering rules, licensing, and interest rate ceilings, and other types of barriers.⁴⁶ Some of the microfinance organizations work much like conventional charities and not-for-profit NGOs: collecting and transmitting private donations from private recipients and using these donations to advance development, including both private sector growth and institutional reform.⁴⁷ Other microfinance organizations work like conventional financial service institutions: where creditors are investors with full expectations of getting their money back as well as an additional return on their investment.⁴⁸ However, some of the newest microfinance organizations function as intermediaries and accordingly operate in a less well-defined space that operates somewhere between the traditional domains of charities, development agencies, and financial institutions.⁴⁹

b. SHGs and MFIs: Contrasting and Competing Microfinance Organizations

Indian microfinance is dominated by two operational approaches: self-help groups (SHGs), and microfinance institutions (MFIs). SHGs are organizational structures comprised of larger groups of approximately 10-25 community members (predominately women) who save amongst themselves and distribute their pooled savings as a group.⁵⁰ SHGs offer a flexible approach which is individually adapted to the local conditions of the various Indian states by the participating SHG agencies.⁵¹ SHGs focus on the ability of people from the lowest classes (scheduled castes) to form a group, meet regularly, pool their savings, lend to members, and establish a documented track record of financial intermediation within the group.⁵² On the basis of the financial track record and collective participation of the community, the SHGs are then permitted to open savings accounts and obtain limited bank loans as informal entities,⁵³ however extensive credit lines to SHGs are critically limited, and are they are based on a certain multiple of SHG members' savings accounts within banks.⁵⁴ The SHG then lends the money it receives from the banks to their members on terms and conditions autonomously decided by each SHG.⁵⁵

Since the late 1980s and early 1990s, the SHGs have been increasingly linked to Indian commercial banks through the loans given (by the bank to the SHG). The SHG is responsible for repaying the bank loan, sometimes directly to the bank, or sometimes through a separate “SHG-promoting institution.”⁵⁶ While the cumulative savings of SHGs could serve as a low-cost source of funds for lending, their potential for growth is frequently limited by the lack of aggregated savings across SHGs.⁵⁷

The structure and growth of SHG outreach has been facilitated and promoted by the Indian government, namely the National Bank for Agriculture and Rural Development (NABARD)

through the SHG-Bank Linkage Programme (“SBLP”)⁵⁸ and the National Reserve Bank of India.⁵⁹ Commercial banks, regional rural banks, and cooperative banks primarily fund the SBLP, and NABARD in turn re-finances the loans given by the bank.⁶⁰ NABARD functions as the prime refinancing agency and has created over 36,000 bank branches and primary cooperatives providing deposit services and credit.⁶¹ NABARD, as of 2006, had worked with over 3,100 governmental and NGO SHG facilitators.⁶²

The National Reserve Bank of India provides political legitimacy to the SHG Indian network system by adjusting and promoting a policy framework that encourages banking relations with SHGs.⁶³ According to NABARD, almost 3 million SHGs have been linked to nearly 500 banks since the program inception, reaching over 11 million households across India.⁶⁴ Despite the extensive network, SHGs have not demonstrated: the operational self-sufficiency, the ability to mobilize sustained financial resources; and the institutional capacity to run without government support in India.⁶⁵

Indian MFIs vary greatly in their organizational models and strategies: they range from not-for-profit NGOs based on the Grameen Bank model, to for-profit entrepreneurial ventures such as SKS, and they also include developmental NGOs that have transitioned from SHG promotion to direct financial intermediation.⁶⁶ Today there are over 1,000 Indian MFIs.⁶⁷ MFIs can be either for-profit or not-for-profit. They traditionally make loans to groups of at least five people (a majority of whom are women) in “joint-liability groups”.⁶⁸ MFIs give loans directly to these groups, but are not allowed to accept deposits.⁶⁹

SKS’s particular methodology involves lending to individual women utilizing five member groups where groups serve as the ultimate guarantor for each member.⁷⁰ SKS designed the

system with small weekly repayments corresponding to cash flows, and implemented the compulsory group training (“CGT”) which is a four day process consisting of one hour sessions that educate clients on SKS processes and procedures and the culture of credit discipline.⁷¹

c. Contrasts in MFI and SHG Growth and Organization: The Source of Competitive Over-Lending?

As of March 2007, SHGs and MFIs have together disbursed \$3.7 billion in microloans in India.⁷² While the SHG model provides the majority of disbursements, the MFI model has demonstrated a higher growth rate in recent years.⁷³ From 2003-2007, MFIs’ loan disbursement share rose from 28% to 47% of all Indian microfinance loans, a value of \$1.7 million.⁷⁴ Despite such growth, estimates suggest that the current supply of MFI microcredit amounted to only about 7% of potential demand during the 2007-2008 year.⁷⁵ However, a recent governmental sector report states that the MFIs disbursed more microcredit funds than the SHGs during the 2008-2009 fiscal year.⁷⁶

Lack of funds ear-marked for SHG formation and the erosion of enthusiasm by banks in acquiring SHG customers are cited as the major reasons for the recent decline in SHG loan disbursement.⁷⁷ While for-profit MFIs frequently market their own products and services, most Indian banks are not really convinced that financing groups like those created by SHGs makes commercial sense and hence exhibit muted interest at best in the promotion of SHGs.⁷⁸ The reluctance of banks to promote SHGs and the recent decline of SHG loan disbursement demonstrates the highly dependent nature of SHGs on the Indian banking and political systems.

In the SHG process, three different stakeholders (NGOs, banks, and state level governments) have to come together to support the SHGs, and frequently the three-way relationship is adversarial,⁷⁹ with stakeholders having conflicting interests regarding SHG

growth. SHGs, because of their wide-organizational structure, have been challenged by sustainability,⁸⁰ whereas most MFIs focus singularly on scaling up microcredit operations and secondarily create a sustainable legal structure and business model that promotes the goal of scaling up credit to individuals.⁸¹ Because of this singular approach, MFIs (particularly for-profit MFIs) have been generally more attractive to international commercial capital.

Recently, for-profit MFIs made considerable inroads in many Indian states where there are also extensive SHG networks.⁸² While for-profit MFIs are more attractive than SHGs because of their extensive capital-backed outreach efforts, they carry their own risk of corruption and conflicts of interest which are manifested in the intrinsic need to keep generating revenue to sustain profits. The need to generate profits likely has encouraged for-profit MFI employees to make irresponsible loans. Accordingly, it is no coincidence that the rise of for-profit MFIs in Andhra Pradesh appears to have led to aggressive competition between microfinance organizations and may have ultimately caused or at least accelerated over-lending in the region. An unhealthy competition brewed among for-profit MFIs and other microfinance groups. Some MFIs pursued multiple lending and coercive recovery practices even more vigorously and at the same time SHGs began to compete with for-profit MFIs. These conditions led to the creation of the MFI Bill.

III. Legal Remedies to the Microfinance Crisis in Andhra Pradesh

Having discussed background factors that led the microfinance crisis in Andhra Pradesh, I will now discuss possible legal remedies and examine two legal frameworks: (1) the existing

state law of the Andhra Pradesh government; (2) the relevant international law, with a particular focus on the Global Compact's Protect Respect Remedy framework. The state law is self-explanatory. Examining the situation through an international law framework, I will examine the right to development, and the strengths and weaknesses of implementing a corporate social responsibility framework such as the Global Compact's Protect Respect Remedy framework.

a. Indian State Governmental Framework: The AP MFI Bill

On November 4, 2010, in response to the growing national concern, the Indian state cabinet approved the MFI Bill.⁸³ The MFI Bill replaces the *Ordinance to Protect the Women Self Groups from Exploitation by the Micro Finance Institutions in the State of Andhra Pradesh and for the matters connected therewith or incidental therefor* which was issued on October 15, 2010.⁸⁴ The MFI Bill makes registration with the government mandatory for MFIs; failure to register can result in imprisonment or monetary fines.⁸⁵ Under the MFI Bill, MFIs must receive prior approval from the registration authority in order to give additional loans to SHG members that are already receiving bank-financed SHG loans.⁸⁶ This particular aspect of the MFI Bill was created to prevent multiple loans being given to one person without verification of the individual's repayment capacity.⁸⁷

There are also extensive provisions within the MFI Bill which regulate the form and manner of MFI loan repayment. Attempts to recover any MFI-based loan through coercion (by MFI employees) will attract a three year jail term or a monetary fine.⁸⁸ All MFIs are required to suspend loan payment collections until they have registered with local authorities in every village where they operate.⁸⁹ Additionally, MFIs will have to specify the area of their

operations, the rate of interest and their system of operation and recovery when they register with the registration authority.⁹⁰

b. Weakness of State Law Framework: MFI Bill Harms Microfinance Growth by Targeting Only MFIs

There are some aspects of the MFI Bill that are legitimate regulatory efforts by the Andhra Pradesh government to track microfinance loan holders and eliminate overlapping loans issued to citizens by MFIs, SHGs and predatory lenders. Policies such as mandatory MFI registration in every village (with the registration authority) showing a listing of interest rates and loan recovery policies is a good idea and should be implemented to help relieve fraud and help promote community awareness.

However, most of the regulations articulated in the MFI Bill target solely MFIs, which makes the MFI Bill appear as if it was created to stop for-profit MFIs from competing with state-sponsored SHGs, instead of mitigating the microfinance crisis in Andhra Pradesh. Many of the policies articulated in MFI Bill seem to give unfettered power to SHGs and even place SHGs in a policing mode: for example, the registering authority may, upon receipt of a complaint by SHG, cancel the registration of the MFI after assigning sufficient proof to the complaint.⁹¹ This requirement seems to inspire competition between the two types of organizations. Many of the regulations, such as the registration requirements are good ideas which should be required of all microfinance organizations, not just MFIs, but in the end some of the good general regulatory ideas are lost in the clearly anti-MFI, pro- SHG stance of the MFI Bill.

The MFI Bill seeks to unreasonably control the availability, delivery process, and price of MFI loans. MFIs, which have been considered instruments in realizing the goal of financial inclusion (in part because of their singular focus of serving a segment of the world's unbanked population), were certainly bound to face regulation. However, the issue is whether the MFI Bill is supportive and instructive of an industry that has emerged as a global frontrunner in combining social and economic goals, or whether the MFI Bill, and any other similar MFI-targeting government legislation will throttle the industry with unrealistic requirements.⁹² Critics of the MFI Bill claim that it is just a means to cancel all MFI-financed loans and accordingly, destroy the MFI industry for local politicians' political benefit in the 2013 elections.⁹³ While MFIs and microfinance may need further regulation, possibly in the form of interest rate caps, stronger criteria and diligence for disbursement, and less aggressive collections methods, what is really required is regulations that protect the consumer community while simultaneously ensuring continued growth and innovation in combining societal and community impact objectives with commercial and corporate drive.⁹⁴

The MFI Bill represents a state law approach and an attempt to solve the issue in a "top-down" manner by regulating the conduct of civil society, industry, and local communities. The MFI Bill and other similar government-driven policies have led to poor governance frameworks for MFIs. I believe the state law approach in the form of the MFI Bill is not a complete solution to the problems facing the microfinance industry in Andhra Pradesh and the microfinance industry generally. Because the entire concept of microfinance centers around the international financial and development industries and NGOs working with local communities and local and state governments to foster industry and development, I think a purely state regulatory approach is inadequate. A better framework to address the diverse stakeholders and take into account the

socio-economic character of microfinance is the Global Compact's Protect, Respect and Remedy Framework, which is rooted in international law and modern corporate social responsibility norms. The Global Compact's Protect Respect Remedy framework is a better fit because it recognizes the rights of local community and state governments, while attempting to impart responsibilities on international financial and business industries, and NGOs.

c. International Framework: The Protect Respect and Remedy Framework

The international human rights law framework was built in the aftermath of the Second World War on the premise that individuals had to be protected from public state power.⁹⁵ States were and still are perceived as the primary and perhaps sole direct duty-holders in the human rights framework. Modern factors that have somewhat shifted the duty-holder role from states to corporations include privatization and globalization but also more generally the overall increased power and influence of corporations in our daily lives.⁹⁶ Globalization and privatization have altered the way we look at human rights and social responsibilities and may require a new vision on human rights: a world vision that more fully accepts non-state actors as new duty-holders in the promotion of human rights and development. Today, there are activists, investors, and businesses who look at globalization and the rise of corporatism and human rights through this lens. Among other things, globalization and corporatism has led to the adoption of various legal principles and guidelines that offer non-binding standards for businesses worldwide. In addition to the Global Compact,⁹⁷ these include the Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises,⁹⁸ the International Labor Organization's (ILO) Tripartite Declaration of Principles Concerning Multinational Enterprises,⁹⁹

the Voluntary Principles on Security and Human Rights,¹⁰⁰ the Global Reporting Initiative (G31) Guidelines,¹⁰¹ and the Social Accountability 8000 (SA8000) standards.¹⁰²

The Global Compact, launched in 2000 by then UN Secretary General Kofi Annan¹⁰³ was created as a values-based platform to promote institutional learning and included respect for human rights among its ten principles applicable to corporations.¹⁰⁴ At the 1999 World Economic Forum, UN Secretary General Kofi Annan proposed the Global Compact. The Global Compact was not envisioned as a regulatory instrument intended to police, enforce, or measure the behavior of companies. Instead, the Global Compact relies on “public accountability, transparency, and the enlightened self-interest of companies, labor, and civil society to initiate and share substantive action in pursuing the principles upon which the Global Compact is based.”¹⁰⁵ The international human rights community experienced difficulty implementing the ideas of the Global Compact and engaging the corporate world on the necessity for universal mandatory human rights standards: in 2003, the UN Commission for Human Rights adopted the draft Norms on the Responsibilities of Transnational and Other Business Enterprises with Regard to Human Rights (“the Norms”).¹⁰⁶ The Norms were rejected by the global corporate world and were not ultimately approved.¹⁰⁷ Moving forward, the Global Compact drew many adherents from industry leaders, but on a voluntary basis.¹⁰⁸ As of 2006, over 2000 business had endorsed the principles.¹⁰⁹

SRSR Ruggie was appointed with a mandate to “identify and clarify” international standards and policies, research the implications of concepts such as “complicity” and “sphere of influence,” and submit views and recommendations to what is now the Human Rights Council.¹¹⁰ The SRSR embraced an important doctrinal move in the application of human rights to business by addressing who is and who is not a “subject” of international law. Increasingly,

he noted corporations are recognized as “participants” at the international level, with the capacity to bear some rights and some duties under international law.¹¹¹

SMSG Ruggie identified five categories of norms, ranging from accepted international law principles to voluntary standards. The two categories with the strongest international law foundation were state duties to protect against corporate abuses and corporate responsibility for international crimes prosecuted in domestic courts. Other possible sources of norms were corporate responsibility for certain human rights violations derived from general human rights norms, soft law mechanisms, and self-regulation.¹¹² The SMSG argued that just as the human rights community has long urged a move “beyond voluntarism” in the area of business and human rights, this must be accompanied by a willingness to look “beyond compliance.”¹¹³ In his later reports this has become formalized as the distinction between the obligation of states to protect human rights, and that of businesses to respect them.¹¹⁴

With the lessons and limitations of the Norms in mind, the SMSG adopted a pragmatic approach to multinational corporations (“MNC”) obligations based on three pillars: the state’s duty to protect its citizens, MNCs’ responsibility to respect human rights, and the need to ensure effective access to remedies (“Protect, Respect, Remedy”).¹¹⁵ The framework embraced the traditional view of states as the primary protector of human rights obligations and envisaged a narrow role for MNCs limited to respecting human rights.¹¹⁶ In defining a company’s specific responsibilities, the SMSG advocates a “due diligence” process that outlines “the steps a company must take to become aware of, prevent and address adverse human rights impacts.”¹¹⁷ The Protect Respect Remedy framework was called by some in the international community the most significant global document on business and human rights ever produced.¹¹⁸

The Protect Respect and Remedy framework's first principle addresses the international human rights law framework, stating, that under international law states have a duty to protect against human rights abuses by non-state actors, including by businesses affecting persons within their territory or jurisdiction.¹¹⁹ This duty includes taking all necessary steps to protect against such human rights abuse, including prevention of investigation and punishment for abuses as well as providing access to redress.¹²⁰

Identifying human rights is an essential step in the Protect Respect Remedy framework, as it is necessary for the state to be aware of human rights in order in order to adequately protect its citizens' access to that right. In the Andhra Pradesh microfinance situation, the right to development is a human right at stake. The right to development is a recognized human right in international law and is codified in the UN Commission on Human Rights,¹²¹ the Declaration on the Right to Development¹²² and the Vienna Declaration.¹²³

The Andhra Pradesh state government's MFI Bill is a governmental effort to protect its citizens' right to development and is a regulatory tool aimed at protecting citizens. However, the MFI Bill would be more effective in protecting the rights of Andhra Pradesh citizens if the Andhra Pradesh government more clearly identified and promoted the right to development, either in the MFI Bill itself or through other state legislation. Furthermore, state efforts at protection of citizens' rights need to be more consistent and uniform, targeting all microfinance organizations not just MFIs.

The second principle in the Protect Respect Remedy framework emphasizes corporate social responsibility as a means of protecting and preventing human rights abuses.¹²⁴ This second "respect" principle provides a baseline for corporate behavior. Particularly important is

the distinction between the responsibilities of states and corporations. The expectation under the Protect Respect Remedy framework is that companies will carry out “due diligence”¹²⁵ to demonstrate that they respect the full range of internationally-recognized human rights. The “due diligence” steps are part of the management process of a company and include: establishing a company human rights policy; conducting human rights impact assessments, (which can be integrated into environmental and social impact assessments); integrating human rights policies into everyday company practices; and tracking performance via monitoring and auditing.¹²⁶ When carrying out due diligence companies should consider: (1) the country and context in which their business activities take place and the human rights challenges that these particular contexts may pose; (2) the human rights impacts of their own activities in that context; and (2) whether they might contribute to abuse through the relationships connected to their activities, including the relationships with business partners and states.¹²⁷

This principle is particularly instructive in the Andhra Pradesh microfinance situation. MFIs, SHGs, and any other pertinent type of microfinance organization should be complying with these types of due diligence activities. It is important to note that SKS is attempting to carry out some of due diligence principles.¹²⁸ SKS has on its website: a code of conduct,¹²⁹ national law guidelines (the Royal Bank of India core values campaign for non-banking financial companies (NBFC)),¹³⁰ and compliance with the Royal Bank’s NBFC requirements.¹³¹ As earlier mentioned, the SKS internal audit team is also in compliance with the ISO 9001.¹³² An internationally recognized management system such as ISO is an excellent tool for all businesses to use and a particularly good tool for businesses that are involved in extensive information and retrieval processes supply chains such as loan repayment. SKS’s creation of a code of conduct exemplifies the first level of due diligence, which is acknowledgment of issue and creation of a

policy. However, there needs to be more compliance by SKS and on the part of all microfinance organizations in Andhra Pradesh. Closely examining the second pillar of the Protect, Respect Remedy framework we see the importance of due diligence and the importance it has in corporate organization and approach.

The Protect Respect Remedy framework's third principle is the need for more effective access to remedies.¹³³ For states to successfully meet their duty to protect against their abuses of non-state third parties, victims should have greater access to both judicial and non-judicial remedies.¹³⁴ Additionally, the corporate responsibility to respect human rights includes the expectation that companies will provide means to address grievances from individuals or communities, whether through company-level grievance mechanisms or participation in industry-level arrangements.¹³⁵

For the implementation of the last “remedy” principle, state and local government should work with microfinance organizations to create access to legal and non-legal remedies. A good first step is already articulated in the MFI Bill, which has an initial proposal to fast track court cases (after appropriate consultation with the High Court) for the settlement of civil disputes related to microfinance loans and abuses.¹³⁶ While it is important for the state to provide judicial access to remedies, microfinance organizations should also provide non-judicial solutions such as complaint boards or consumer hotlines or community centers. Additionally, a public-private partnership between the microfinance organizations and the state government to provide mediation opportunities, where consumers can voice their grievances to microfinance officials and be heard in front of trained mediators and arbitrators, who have the power to settle

microfinance-related disputes would be a welcome means to increase community access to effective remedies.

d. Weakness of International Law Framework: Protect Respect Remedy's Lack of Enforceability

It is important to note there are some obvious limitations to the Protect Respect Remedy framework and its application to the Andhra Pradesh microfinance situation. Namely, questions regarding enforceability and the conflicts between legitimate policy demands and legitimate human rights demands exist in a voluntary evolving legal framework such as the Protect Respect Remedy framework. The SRSG recognizes the importance of these issues, but does not seem to address them in his Draft Guiding Principles. As the SRSG points out in paragraph 5 of his Report, the protection of human rights is complicated by other legitimate policy demands coming into play, including the need for investment, jobs, as well as access to markets, technology and skills.¹³⁷ Governments may often refrain from protecting human rights in fear of diminishing jobs and losing foreign direct investment.¹³⁸ While these are real concerns, they should not stand in the way of employing the Protect Respect Remedy framework to help delineate roles and obligations in situations such as the microfinance crisis in Andhra Pradesh. Rather, because of its very recognition and acknowledgement of these issues, and the Protect Respect Remedy framework can be used to help all pertinent stakeholders protect human rights.

IV. Conclusion

The conflict between human rights and economic development is at the heart of the business and human rights debate. Even though the SRSG acknowledges the importance of the dichotomy of legitimate policy demands, the framework lacks a vision of how these policy

demands can be conciliated. However, the Protect Respect Remedy Framework can help to improve microfinance regulation and help corporations promote the right to development in Andhra Pradesh and similar communities. The Protect Respect Remedy Framework as it stands today is an adaptive and flexible legal framework that allows for remedies that are both legal and non-judicial and includes stakeholders from many different sectors of modern life such as civil society, industry, and government.

Government leadership as well as credible organizational involvement is required if the stakeholders from industry, government, and community are to be brought to common ground from which concerted action can take place. The microfinance sector requires regulation which will protect citizens' rights and still encourage responsible microfinance growth. Institutional stability and sustainability issues are best addressed by funding banks and equity investors. Regulation should be government's domain but it should be singular in its purpose of ensuring that microfinance institutions, by intent and practice, are providers of responsible finance to vulnerable people. Government should not use regulation to stymie the microfinance industry or instill political elements into the microfinance industry. These changes taken together will build confidence amongst stakeholders and improve microfinance lending in Andhra Pradesh.

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² A microfinance institution (MFI) is an organization that provides financial services in the form of community or individual loans to individuals and communities who are outside the formal

banking process. This very broad definition includes a wide range of providers that vary in their legal structure, mission, and methodology. However, all share the common characteristic of providing financial services to clients who are poorer and more vulnerable than traditional bank clients. MFIs can be for-profit and not-for-profit organizations. Definition available at <http://www.cgap.org/p/site/c/template.rc/1.26.1308/> (last visited March 24, 2011).

³Paul Beckett, *SKS Chairman Fights Loan Backlash*, Wall Street Journal, (November 17, 2010), available at

<http://online.wsj.com/article/SB10001424052748704312504575617903551069076.html?KEYWORDS=%22SKS+Chairman+Fights+Loan+backlash%22/>; Vikas Bijaj and Lydia Polgreen, *India Microcredit Sector Faces Collapse From Defaults*, New York Times (November 18, 2010),

<http://www.nytimes.com/2010/11/18/world/asia/18micro.html?scp=1&sq=%22India%20Microcredit%20Faces%20Collapse%20From%20Defaults&st=cse>; Swati Bharadwaj, Partha Sinha, Roli Srivastava *The Ugly Underbelly of Microfinance*, The Times of India, (October 18, 2010), available at <http://timesofindia.indiatimes.com/business/india-business/The-ugly-underbelly-of-Microfinance/articleshow/6766589.cms>.

⁴ *Id.*

⁵ *An Ordinance to Protect the Women Self Groups from Exploitation by the Micro Finance Institutions in the State of Andhra Pradesh and for the matters connected therewith or incidental therefor* was assented to and made into law by Andhra Pradesh Governor ESL Narasimhan on October 15, 2010. Hereinafter (“MFI Bill”) please see <http://www.cgap.org/gm/document-1.9.48097/Andhra-MFI-Ordinance.pdf> for a copy of the text. (Last visited March 21, 2011.)

⁶SHG- Self Help Group is the most dominant form of microfinance lending organization in India.

⁷The United Nations Global Compact Operational Guide for Medium-Scale Enterprises, 3 (UN Global Compact 2007 available online at [:// www.unglobalcompact.org/docs/news_events/8.1/Operational_guide_ME.pdf](http://www.unglobalcompact.org/docs/news_events/8.1/Operational_guide_ME.pdf) (Last visited Oct 25, 2010).

⁸ Kevin E. Davis and Anna Gelpern, *Peer to Peer Financing For Development: Regulating the Intermediaries*, 42 N.Y.U. J. Int’l L. & Pol.1209, 1216 (2010); Jean-Michel Severino & Olivier Ray, *The End of ODA: Death and Rebirth of a Global Public Policy*, Center for Global Development, Working Paper No. 167, 10-11, March 25, 2009, available at http://www.cgdev.org/files/1421419_file_End_of_ODA_FINAL.pdf. (Last visited March 24, 2011).

⁹ Anne Lawrence, James Weber, *Business & Society: Stakeholders Ethics Public Policy*, 152, (McGraw Hill International/Irwin, 12th ed.) (2007).

¹⁰ UN Global Compact, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>), hereinafter the “Protect Respect Remedy Framework”

¹¹ *Id.*

¹² Erik Andre Andersen, Peder Andersen, Birgit Lindsnaes eds. *Towards New Global Strategies: Public Goods and Human Rights*, 457, (Martinus Nijhoff Publishers, Leiden) (2007)

¹³The Universal Declaration of Human Rights recognizes the right to development

as a human right in Articles 22, 23, and 29. Full text is available at www.un.org/en/documents/udhr/; Declaration on the Right to Development, A/RES/41/128, (1986) available at www.un.org/documents/ga/res/41/a41r128.htm; The right to development was re-affirmed in the Vienna Declaration (1993): “The right to development, as established in the Declaration, is a universal and inalienable right and an integral part of fundamental human rights.” Vienna Declaration and Programme of Action, A/CONF. 157/23, (1993) available [http://www.unhchr.ch/huridocda/huridoca.nsf/\(symbol\)/a.conf157.23.en](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.conf157.23.en).

¹⁴ Microfinance has been around since the 1960s and is defined as “banking the unbankables, bringing credit, savings and other essential financial services within the reach of tens of-or rather hundreds of-millions of people who are too poor to be served by regular banks, in most cases because they are unable to offer sufficient collateral. . . . In general, banks are for people with money, not for people without.” Pamela Das, *Avoiding a Subprime-Like Crisis in Microfinance: Lessons from the Mexican and Bolivian Experience*, 15 L. & Bus. Rev. Am. 819, 824 (2009).

¹⁵ *Id.* at 823; Muhammad Yunus, Founder Grameen Bank, *Expanding Microcredit Outreach to Reach the Millennium Development Goals- Some Issues for Attention*, Address at the International Seminar on Attacking Poverty with Microcredit (Jan. 8-9, 2003), available at <http://www.microfinancegateway.org/gm/document-1.9.29160/04.pdf>.

¹⁶ Mercy Corps Global Envision: The Confluence of Global Markets and Poverty Alleviation, *The History of Microfinance: From the Archives*, (2006) <http://www.globalenvision.org/library/4/1051>

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Des, *supra* note 14 at 824.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Vikas Bijaj and Lydia Polgreen, *India Microcredit Sector Faces Collapse From Defaults*, New York Times (November 18, 2010), <http://www.nytimes.com/2010/11/18/world/asia/18micro.html?scp=1&sq=%22India%20Microcredit%20Faces%20Collapse%20From%20Defaults&st=cse>.

²⁷ See Mercy Corps Global Envision: The Confluence of Global Markets and Poverty Alleviation, *supra* at note 16. For example, in 1972 the Self Employed Women's Association (SEWA) was registered as a trade union in Gujarat, India, with the main objective of strengthening its members' bargaining power to improve income, employment and access to social security. In 1973, to address their lack of access to financial services, the members of SEWA decided to create a bank of their own. Four thousand women contributed share capital to establish the Mahila SEWA Co-operative Bank. Since then the SEWA Co-Operative Bank has been providing banking services to poor, illiterate, self-employed women and has become a viable financial venture with today around 30,000 active clients. SEWA information available at http://www.sewa.org/About_Us.asp.

²⁸ Das *supra* note 14 at 825.

²⁹ *Id.*

³⁰ In Bangladesh, Professor Muhammad Yunus addressed the banking problem faced by the poor through a program of experimental credit. The program rapidly spread to hundreds of villages in the region. Through a special relationship with rural banks, Yunus disbursed and recovered thousands of loans, however traditional commercial bankers refused to take over the project at the end of the pilot phase. Eventually, through the support of donors, the Grameen Bank was founded in 1983 and now serves more than 4 million borrowers. Grameen Bank, available at http://www.grameen-info.org/index.php?option=com_content&task=view&id=19&Itemid=114 (last visited February 13, 2011)

³¹ SKS Microfinance, <http://www.sksindia.com/methodology.php/> (last visited March 21, 2011).

³² *Id.*

³³ See Bajaj and Polgreen, *supra* note 26.

³⁴ *Id.*

³⁵ *Id.*; see also http://www.moneycontrol.com/news/business/sks-microfinance-internal-audit-gets-iso-certification_338368.html. ISO Certification represents an international consensus on good management practices with the aim of ensuring that the organization can deliver the product or services that meet the client's quality requirements. These good practices have been distilled into a set of standardized requirements for a quality management system, regardless of what your organization does, its size, or whether it's in the private, or public sector.

³⁶ SKS Microfinance, <http://www.sksindia.com/ourjourney.php/> (last visited March 21, 2011).

³⁷ Bijaj & Polgreen, *supra* note 26.

³⁸ J. Vikas, *Sun Co-Founder Uses Capitalism to Help Poor*, New York Times, (October 5, 2010) available at

<http://www.nytimes.com/2010/10/06/business/global/06khosla.html?ref=sunmicrosystemsinc.>; Stephen Rasmussen, *6 Questions for SKS*, (September 28, 2010) available at <http://microfinance.cgap.org/2010/09/28/6-questions-for-sks/>.

³⁹ Ruth David and Parish Ataxia, *SKS Microfinance Shares Jump in Mumbai Trading Debut*, Bloomberg, (August 16, 2010) available at <http://www.bloomberg.com/news/2010-08-16/soros-backed-sks-surges-in-mumbai-debut-on-outlook-for-microfinance-demand.html>; see also SKS MICROFINANCE RAISES \$75 MILLION (RS. 366 CRORE) Official Press Release of SKS, (November 11, 2008), available at http://www.sksindia.com/press_releases_details.php?id=146.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See e.g., Matthew Benjamin, *Americans Under 70 May Find 2008 Was Their Least Favorite Year*, Bloomberg, (December 31, 2008) available at

<http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aRhcv8yIAheo&refer=home>.

⁴³ SKS MICROFINANCE RAISES \$75 MILLION (RS. 366 CRORE) Official Press Release of SKS, (November 11, 2008), available at http://www.sksindia.com/press_releases_details.php?id=146.

⁴⁴ *Id.*

⁴⁵ Davis & Gelpert, *supra* note 8 at 1211; Ian J. Galloway, *Peer-to-Peer Lending and Community Development Finance*, Federal Bank of San Francisco Working Paper 2009-06 (August 2009) available at <http://www.frbsf.org/publications/community/wpapers/2009/wp2009-06.pdf>. (Last visited March 24, 2011.)

⁴⁶ Davis & Gelpert, *supra* note 8 at 1218.

⁴⁷ *Id.* at 1211; *see also* Grameen Foundation, Take Action, available at <http://www.grameenfoundation.org/take-action>.

⁴⁸ Examples include the investment funds listed as members of the Council of Microfinance Equity Funds. Davis and Gelpern *supra* note 8 at 1212; CMEF-Membership, available at <http://www.cmef.com/Page.aspx?pid=1747>.

⁴⁹ *Id.*

⁵⁰ Hans Dieter Siebel, *SHG Banking in India: The Evolution of a rural financial innovation*, (2005) available at <http://www.uni-koeln.de/ew-fak/aef/10-2005/2005-9%20India%20Evolution%20of%20SHG%20Banking.pdf>; E. Kropp & B.S. Suran, *Linking Banks and Self Help Groups in India—An Assessment*, NABARD (2002); M. Harper, *Promotion of Self Help Groups under the SHG Bank Linkage Programme in India—An Assessment*, NABARD 2002

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Davis and Gelpern *supra* note 8 at 1214; *see also* Acumen Fund, Investment Discipline, available at <http://www.acumenfund.org/investments/investment-discipline.html>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ George Manju, *A Primer on Microfinance in India: History, Challenges, Impact: The Building Blocks of Indian Microfinance* available at <http://microfinancegateway.org/p/site/m/template.rc/1.26.9150/>.

⁵⁹ *See* Siebel *supra* note 50.

⁶⁰ Manju *supra* note 58 at 3.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ This paper, because of its limited scope is concerned with primarily SKS and the 5-6 other institutions that have transitioned into for-profit MFIs and have dramatically grown over the last five to ten years. These MFIs, which include SKS, SHARE, and Spandana, were initially NGOs but after 2000, converted into for-profit, regulated entities, mostly Non-Banking Finance Companies (NBFCs).

⁶⁹ Justin Oliver, *Who's the Culprit? Accessing Finance in Andhra Pradesh*, CGAP (November 11, 2010) available at <http://microfinance.cgap.org/2010/11/11/who%E2%80%99s-the-culprit-accessing-finance-in-andhra-pradesh/>. (Last visited March 24, 2011.)

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Neha Aggarwal, Devyani Parameshwar, Sagar Siva Shankar, & Roberto Zanchi, *Intellectap's Inverting the Pyramid: Indian Microfinance Coming of Age* (2007), available at http://intellectap.com/assets/81/Inverting_the_Pyramid_3rd_Edition-Print.pdf.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ N. Srinivasan, *Microfinance India, State of the Sector Report 2009*, 37-52, (Sage Publications New Delhi) (2009) available at <http://www.microfinanceindia.org/uploads/State-of-the-Sector-Report-2009.pdf>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Manju *supra* note 57.

⁸¹ *Id.*

⁸² *Id.*

⁸³ See MFI Bill *supra* note 5, generally; see also *AP Microfinance Institution Ordinance Comes Into Force*, (October 15, 2010) available at <http://indiamicrofinance.com/andhra-pradesh-mfi-ordinance-2010.html>.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Sirish Dhurjety, *Future of Microfinance in Andhra Pradesh and India: Connecting the Dots*, (December 16, 2010) available at <http://indiamicrofinance.com/future-investment-microfinance-andhra-pradesh-india.html>.

⁹³ *Id.* In his article, Dhurjety argues that the government might announce more MFI-loan waivers in the future (the AP government announced loan waivers of Rs 72,000 crore) to curry political favor in the future.

⁹⁴ *Id.*

⁹⁵ Chris Jochnik and Nina Rabaeus, *Business and Human Rights Revitalized: A New UN Framework Meets Texaco in the Amazon*, 33 Suffolk Transnat'l L. Rev. 413, 415 (2010).

⁹⁶ *Id.*; see also Lawrence & Weber *supra* note 9 at 151-154.

⁹⁷ See *supra* note 7.

⁹⁸ Originally adopted in 1976, the most recent revision of the guidelines was completed in 2000. See OECD Guidelines for Multinational Enterprises (Organisation for Economic Co-operation and Development 2000), online at <http://www.oecd.org/daf/investment/guidelines>. (Last visited March 24, 2011).

⁹⁹ Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (International Labour Organization 1977), available online at <http://actrav.ilo.org/actrav-english/telearn/global/ilo/guide/triparti.htm>. (Last visited March 24, 2011).

¹⁰⁰ Voluntary Principles on Security and Human Rights (Voluntaryprinciples.org 2000), online at http://voluntaryprinciples.org/files/voluntary_principles_english.pdf (Last visited March 24, 2011).

¹⁰¹ G3.1 Guidelines (Global Reporting Initiative 2011), online at <http://>

www.globalreporting.org/ReportingFramework/G31Guidelines. (Last visited March 24, 2011).

¹⁰² Social Accountability 8000 (SA8000) (Social Accountability International 2008), online at http://www.sa-intl.org/_data/n_0001/resources/live/2008StdEnglishFinal.pdf. (Last visited March 24, 2011).

¹⁰³ Jochnik and Rabaeus *supra* note 95 at 418.

¹⁰⁴ *Id.*

¹⁰⁵ See The United Nations Global Compact Operational Guide for Medium-Scale Enterprises, 3 (UN Global Compact 2007), online at http://www.unglobalcompact.org/docs/news_events/8.1/Operational_guide_ME.pdf (visited Oct 25, 2010).

¹⁰⁶ Comm'n on Human Rights, Sub-Comm'n on the Promotion and Prot. of Human Rights, Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2 (Aug.26, 2003) hereinafter "Norms".

¹⁰⁷ *Id.*

¹⁰⁸ United Nations Global Compact Office, United Nations Global Compact: Corporate Citizenship in the World Economy (2008), available at http://www.unglobalcompact.org/docs/news_events/8.1/GC_brochure_FINAL.pdf.

¹⁰⁹ Lawrence & Weber *supra* note 9 at 150-155.

¹¹⁰ UN Commission on Human Rights Res No 2005/69 P 1, UN Doc E/CN.4/2005/L.87 (2005); Simon Chesterman, *Lawyers, Guns, and Money: The Governance of Business Activities in Conflict Zones*, 11 Chi. J. Int'l L. 321, 323-29 (2011)

¹¹¹ John Ruggie, *Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts* P 20, UN Doc A/HRC/4/35 (2007); Rosalyn Higgins, *Problems and Process: International Law and How We Use It* 49-50 (Oxford 1994); Chesterman *supra* note 110 at 323-28.

¹¹² John Ruggie, *Business and Human Rights: The Evolving International Agenda*, 101 Am J Intl L 819, 820-21, 828-37 (2007).

¹¹³ *Id.* at 839-40.

¹¹⁴ See John Ruggie, *Business and Human Rights: Towards Operationalizing the Protect Respect Remedy Framework* P 64, UN Doc A/HRC/11/13 (2009), Chesterman *supra* note 110 at 323-29, see also Protect, Respect Remedy Framework, *supra* note 10.

¹¹⁵ Miriam Mafessanti, *Corporate Misbehavior & International Law: Are There Alternatives To Complicity?*, 19, South Carolina J. Int'l L. & Bus., Spring 2010. Quoting Protect, Respect and Remedy Framework para 19.

¹¹⁶ Mafessanti, *supra* note 115 at 18.

¹¹⁷ *Id.*

¹¹⁸ Sarah Altschuller and Amy Lehr, *Corporate Social Responsibility*, 43 Int'l Law. 577, (2009); see also *Special Reports: Review of the Year 2008—The Year the Economic Climate Changed*, Ethical Corp., (December 2, 2008), <http://www.ethicalcorp.com/content.asp?ContentID=6230>.

¹¹⁹ Altschuller and Lehr, *supra* note 118 at 578; see also Special Representative of the Secretary-General, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Summary, P 18, Delivered to the U.N. Human Rights Council, U.N. Doc. A/HRC/8/5 (Apr. 7 2008) available at <http://www2.ohchr.org/english/bodies/hrcouncil/8session/reports.htm>

¹²⁰ *Id.*

¹²¹ The Universal Declaration of Human Rights recognizes the right to development as a human right in Articles 22, 23, and 29. Full text is available at www.un.org/en/documents/udhr/.

¹²² Declaration on the Right to Development, A/RES/41/128, (1986) available at www.un.org/documents/ga/res/41/a41r128.htm.

¹²³ The right to development was re-affirmed in the Vienna Declaration (1993): “The right to development, as established in the Declaration, is a universal and inalienable right and an integral part of fundamental human rights.” Vienna Declaration and Programme of Action, A/CONF. 157/23, (1993) available

[http://www.unhchr.ch/huridocda/huridoca.nsf/\(symbol\)/a.conf157.23.en](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.conf157.23.en).

¹²⁴ *See* Protect, Respect Remedy Framework, *supra* note 10.

¹²⁵ Due diligence consists of the steps a company must take to become aware of, prevent and address adverse human rights impacts. *See* Protect Respect Remedy Framework, *supra* note 10.

¹²⁶ Altschuller and Lehr *supra* note 118 at 578.

¹²⁷ *Id.*

¹²⁸ SKS Microfinance, <http://www.sksindia.com/downloads.pdf>

¹²⁹ SKS Microfinance, http://www.sksindia.com/downloads/sks_code_of_conduct.pdf.

¹³⁰ *Id.*

¹³¹ SKS Microfinance, http://www.sksindia.com/downloads/compliance_with_RBI.pdf

¹³² *Id.*

¹³³ *See* Protect, Respect Remedy Framework, *supra* note 10

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *See* MFI Bill, *supra* note 5.

¹³⁷ Robert Grabosch *The Ruggie Guiding Principles and the Lack of External Monitoring* (December 18, 2010), <http://internationalawnotepad.wordpress.com/2011/01/13/ruggie-guiding-principles-external-monitoring/>.

¹³⁸ *Id.*